

House Bill 54

By: Representatives Powell of the 29th, McCall of the 30th, and Bearden of the 68th

A BILL TO BE ENTITLED

AN ACT

To regulate interbasin and intrabasin transfers of surface water and ground water; to amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, so as to change certain provisions relating to permits for withdrawal, diversion, or impoundment of surface waters and monitoring, recording, and reporting of water withdrawal; to change certain provisions relating to permits to withdraw, obtain, or use ground water; water conservation plans; factors to be considered; notice of official acts; administrative hearings; and judicial review; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, is amended by revising subsection (n) of Code Section 12-5-31, relating to permits for withdrawal, diversion, or impoundment of surface waters and monitoring, recording, and reporting of water withdrawal, as follows:

"(n)(1) As used in this subsection, the term:

(A) 'Basin' means the Altamaha, Chattahoochee, Coosa, Flint, Ochlocknee, Ocmulgee, Oconee, Ogeechee, St. Mary's, Satilla, Savannah, Suwannee, Tallapoosa, or Tennessee River basin.

(B) 'Basin of origin' means the basin from which the withdrawal, diversion, or pumping of surface waters occurs.

(C) 'Critical needs' means temporary, short-term needs for water such as those due to equipment failure, source contamination, or severe drought affecting public health and safety.

(D) 'Interbasin transfer' means the withdrawal, diversion, or pumping of surface waters from a point within any basin of origin and the discharge of all or any part of that water into a different receiving basin by means of pipes, pipelines, conduits, ditches, or canals; provided, however, interbasin transfer shall not include the following:

(i) Surface water transferred from one place to another in connection with mining, conveying, processing, beneficiation, sale, or shipment of any mineral, as such term is defined in paragraph (5) of Code Section 12-4-72, through whatever mode of transportation including but not limited to pipes, pipelines, conduits, ditches, or canals; and

(ii) Surface water contained in any intermediate or product shipped or transported for further processing or for sale.

(E) 'Intrabasin transfer' means the withdrawal, diversion, or pumping of surface waters from a point within a basin and discharge of all or any part of that water at a different location in that basin by means of pipes, pipelines, ditches, conduits, or canals; provided, however, intrabasin transfer shall not include the following:

(i) Surface water transferred from one place to another in connection with mining, conveying, processing, beneficiation, sale, or shipment of any mineral, as such term is defined in paragraph (5) of Code Section 12-4-72, through whatever mode of transportation including but not limited to pipes, pipelines, conduits, ditches, or canals; and

(ii) Surface water contained in any intermediate or product shipped or transported for further processing or for sale.

(F) 'Receiving basin' means the basin into which the discharge of all or any part of transferred water occurs.

(2) It is the policy of this state to protect reasonable needs of both the basin of origin and the receiving basin through the regulation of interbasin transfers. It is also the policy of this state to protect the basin of origin through regulation of intrabasin transfers. Accordingly, in the consideration of applications for surface-water withdrawal permits which if granted on or after the effective date of this subsection would authorize ~~the withdrawal and transfer of surface waters across natural basins~~ an interbasin or an intrabasin transfer, the director shall be bound by the following requirements:

(+)(A)(i) The director shall give due consideration to competing existing uses and applications for permits which would not involve interbasin transfers of surface waters and, subject to subsection (e) of this Code section, shall endeavor to allocate a reasonable supply of surface waters to such users and applicants;

(ii) The regulation of interbasin transfers shall be informed by scientific knowledge, must respect natural systems, and must protect the basins of origin and the receiving basins. In addition to those factors listed in subsection (e) of this Code section, the director shall consider the following factors in considering an application for an interbasin transfer permit:

1 (I) The quantity of the proposed withdrawal and the stream flow of the basin of origin,
2 with special concern for low-flow conditions;

3 (II) Protection of the present uses and consideration of projected stream uses of the
4 basin of origin, with special concern for low-flow conditions and the ecology of the
5 stream;

6 (III) Protection of the water quality in the basin of origin, with special concern for
7 low-flow conditions;

8 (IV) The economic feasibility, cost effectiveness, and environmental impacts of the
9 proposed permit in relation to alternative sources of water supply, including the
10 cumulative impacts of current and proposed interbasin transfers in the basin;

11 (V) The overall current water demand and the reasonably foreseeable future water
12 needs of the basin of origin;

13 (VI) The supply of water presently available to the receiving basin, as well as the
14 overall current water demand and the reasonably foreseeable future water needs of the
15 receiving basin, including methods of water use, conservation, and efficiency of use;

16 (VII) The beneficial impact of any proposed transfer and the demonstrated capability
17 of the applicant to implement effectively its responsibilities under the requested
18 permit;

19 (VIII) The nature of the applicant's use of the water to determine whether the use is
20 reasonable;

21 (IX) Whether the applicant has implemented all reasonable efforts to promote
22 conservation;

23 (X) Whether the proposed project requiring the interbasin transfer shall promote
24 conservation of water;

25 (XI) The requirements of other state and federal agencies with authority relating to
26 water resources;

27 (XII) The availability of water to respond to emergencies, including drought in the
28 basin of origin and in the receiving basin;

29 (XIII) Whether the project shall have any beneficial or detrimental impact on
30 navigation, hydropower or other power generation, fish and wildlife habitats,
31 aesthetics, or recreation;

32 (XIV) The quantity, quality, location, and timing of water returned to the basin of
33 origin, receiving basin, or a downstream basin;

34 (XV) Climatic conditions;

35 (XVI) Any offsetting increases in flow in the basin of origin that may be arranged
36 through permit conditions;

1 (XVII) The number of downstream river miles from which water will be diverted as
2 a result of the transfer;

3 (XVIII) Consultations with local governments affected by the proposed transfer and
4 use;

5 (XIX) The correlation between surface water and ground water in the basin of origin
6 and whether the proposed use will be harmful to the supply of either or both;

7 (XX) Impact on interstate water use;

8 (XXI) The cumulative effect on the basin of origin and the receiving basin of any
9 water transfer or consumptive water use that is authorized or projected; and

10 (XXII) Such other factors as are reasonably necessary to carry out the purposes of
11 Georgia law.

12 (iii) Any person proposing to receive an interbasin transfer must be implementing a
13 water conservation plan approved by the director prior to the receipt of any requested
14 interbasin transfer.

15 (iv) The director shall ensure that any interbasin transfer approved shall comply with
16 the requirements of the Board of Natural Resources for instream flow protection in the
17 basin of origin;

18 (B) Any interbasin transfer that crosses more than two adjacent counties or intrabasin
19 transfer that crosses more than four adjacent counties is prohibited, except for interbasin
20 or intrabasin transfers that are part of a plan approved by the division pursuant to Article
21 10 of this chapter, the 'Metropolitan North Georgia Water Planning District Act,' to
22 satisfy critical needs, or to provide water within the lower Savannah and lower Ogeechee
23 river basins within the 24 coastal counties identified in the division's April 23, 1997,
24 'Interim Strategy for Managing Salt Water Intrusion in the Upper Floridan Aquifer of
25 Southeast Georgia';

26 (C) Any person who receives in one county an interbasin or intrabasin transfer of water
27 which originated in a second county is prohibited from transferring any or all of such
28 water by means of pipes, pipelines, conduits, ditches, or canals into a third county, except
29 for interbasin or intrabasin transfers that are part of a plan approved by the division
30 pursuant to Article 10 of this chapter, the 'Metropolitan North Georgia Water Planning
31 District Act,' or except to satisfy critical needs;

32 (D) The provisions of subparagraphs (B) and (C) of this paragraph notwithstanding, any
33 new interbasin transfer of water withdrawn from the Etowah River upriver from Lake
34 Allatoona is prohibited on and after the effective date of this subsection;

35 (E) The exceptions provided for transfers pursuant to Article 10 of this chapter, the
36 'Metropolitan North Georgia Water Planning District Act,' in subparagraphs (B) and (C)
37 of this paragraph shall not be considered in the development of or included in any

comprehensive state-wide water management plan adopted pursuant to Article 8 of this chapter on or after the effective date of this subsection, and such exceptions shall be inapplicable on and after the adoption of any such plan; and

~~(2)(F)~~ The director shall provide a press release regarding the proposed issuance of ~~all~~ any permits authorizing such interbasin transfer of surface waters to newspapers of general circulation in all areas of the state which would be affected by such issuance. The press release shall be provided at least ~~seven~~ 30 days before the issuance of ~~these~~ any such permits. If the director ~~should determine~~ determines that sufficient public interest warrants a public hearing on the issuance of ~~these~~ any such permits, he or she shall cause such a hearing to be held somewhere in the area affected prior to the issuance of ~~these~~ any such permits."

SECTION 2.

Said chapter is further amended in Code Section 12-5-96, relating to permits to withdraw, obtain, or use ground water; water conservation plans; factors to be considered; notice of official acts; administrative hearings; and judicial review, by adding a new subsection to read as follows:

"(g.1)(1) As used in this subsection, the term:

(A) 'Basin' means the Altamaha, Chattahoochee, Coosa, Flint, Ochlocknee, Ocmulgee, Oconee, Ogeechee, St. Mary's, Satilla, Savannah, Suwannee, Tallapoosa, or Tennessee River basin.

(B) 'Basin of origin' means the basin from which the withdrawal, diversion, or pumping of ground water occurs.

(C) 'Critical needs' means temporary, short-term needs for water such as those due to equipment failure, source contamination, or severe drought affecting public health and safety.

(D) 'Interbasin transfer' means the withdrawal, diversion, or pumping of ground water from a point within or beneath any basin of origin and the discharge of all or any part of that water into a different receiving basin by means of pipes, pipelines, conduits, ditches, or canals; provided, however, interbasin transfer shall not include the following:

(i) Ground water transferred from one place to another in connection with mining, conveying, processing, beneficiation, sale, or shipment of any mineral, as such term is defined in paragraph (5) of Code Section 12-4-72, through whatever mode of transportation including but not limited to pipes, pipelines, conduits, ditches, or canals; and

(ii) Ground water contained in any intermediate or product shipped or transported for further processing or for sale.

(E) 'Intrabasin transfer' means the withdrawal, diversion, or pumping of ground water from a point within a basin and discharge of all or any part of that water at a different location in that basin by means of pipes, pipelines, ditches, conduits, or canals; provided, however, intrabasin transfer shall not include the following:

(i) Ground water transferred from one place to another in connection with mining, conveying, processing, beneficiation, sale, or shipment of any mineral, as such term is defined in paragraph (5) of Code Section 12-4-72, through whatever mode of transportation including but not limited to pipes, pipelines, conduits, ditches, or canals; and

(ii) Ground water contained in any intermediate or product shipped or transported for further processing or for sale.

(F) 'Receiving basin' means the basin into which the discharge of all or any part of transferred water occurs.

(2) It is the policy of this state to protect reasonable needs of both the basin of origin and the receiving basin through the regulation of interbasin transfers. It is also the policy of the state to protect the basin of origin through regulation of intrabasin transfers. Accordingly, in the consideration of applications for ground-water withdrawal permits which if granted on or after the effective date of this subsection would authorize an interbasin or intrabasin transfer, the director shall be bound by the following requirements:

(A)(i) The director shall give due consideration to competing existing uses and applications for permits which would not involve interbasin transfers of ground water and, subject to subsection (d) of this Code section, shall endeavor to allocate a reasonable supply of ground water to such users and applicants.

(ii) The regulation of interbasin transfers shall be informed by scientific knowledge, must respect natural systems, and must protect the basins of origin and the receiving basins. In addition to those factors listed in subsection (d) of this Code section, the director shall consider the following factors in considering an application for an interbasin transfer permit:

(I) The quantity of the proposed withdrawal with special concern for low-flow conditions;

(II) Protection of the present uses and consideration of projected ground-water uses of the basin of origin, with special concern for low-flow conditions;

(III) Protection of the water quality in the basin of origin, with special concern for low-flow conditions;

(IV) The economic feasibility, cost effectiveness, and environmental impacts of the proposed permit in relation to alternative sources of water supply, including the cumulative impacts of current and proposed interbasin transfers in the basin;

(V) The overall current water demand and the reasonably foreseeable future water needs of the basin of origin;

(VI) The supply of water presently available to the receiving basin, as well as the overall current water demand and the reasonably foreseeable future water needs of the receiving basin, including methods of water use, conservation, and efficiency of use;

(VII) The beneficial impact of any proposed transfer and the demonstrated capability of the applicant to implement effectively its responsibilities under the requested permit;

(VIII) The nature of the applicant's use of the water to determine whether the use is reasonable;

(IX) Whether the applicant has implemented all reasonable efforts to promote conservation;

(X) Whether the proposed project requiring the interbasin transfer shall promote conservation of water;

(XI) The requirements of other state and federal agencies with authority relating to water resources;

(XII) The availability of water to respond to emergencies, including drought in the basin of origin and in the receiving basin;

(XIII) Reserved;

(XIV) The quantity, quality, location, and timing of water returned to the basin of origin or receiving basin;

(XV) Climatic conditions;

(XVI) Any offsetting increases in flow in the basin of origin that may be arranged through permit conditions;

(XVII) Reserved;

(XVIII) Consultations with local governments affected by the proposed transfer and use;

(XIX) The correlation between surface water and ground water in the basin of origin and whether the proposed use will be harmful to the supply of either or both;

(XX) Impact on interstate water use;

(XXI) The cumulative effect on the basin of origin and the receiving basin of any water transfer or consumptive water use that is authorized or projected; and

(XXII) Such other factors as are reasonably necessary to carry out the purposes of Georgia law.

(iii) Any person proposing to receive an interbasin transfer must be implementing a water conservation plan approved by the director prior to the receipt of any requested interbasin transfer.

(iv) The director shall ensure that any interbasin transfer approved shall comply with the requirements of the Board of Natural Resources for ground-water protection in the basin of origin;

(B) Any interbasin transfer that crosses more than two adjacent counties or intrabasin transfer that crosses more than four adjacent counties is prohibited, except to satisfy critical needs or to provide water within the lower Savannah and lower Ogeechee river basins within the 24 coastal counties identified in the division's April 23, 1997, 'Interim Strategy for Managing Salt Water Intrusion in the Upper Floridan Aquifer of Southeast Georgia';

(C) Any person who receives in one county an interbasin transfer of water which originated in a second county is prohibited from transferring any or all of such water by means of pipes, pipelines, conduits, ditches, or canals into a third county, except to satisfy critical needs; and

(D) The director shall provide a press release regarding the proposed issuance of any permits authorizing such interbasin transfer of ground water to newspapers of general circulation in all areas of the state which would be affected by such issuance. The press release shall be provided at least 30 days before the issuance of any such permits. If the director determines that sufficient public interest warrants a public hearing on the issuance of any such permits, he or she shall cause such a hearing to be held somewhere in the area affected prior to the issuance of any such permits."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.